# STATE OF MICHIGAN

# COURT OF APPEALS

In the Matter of ARN, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KELLI BARKER,

Respondent-Appellant.

UNPUBLISHED
May 27, 2003

No. 240231
Wayne Circuit Court
Family Division
LC No. 84-243391

Before: Whitbeck, C.J., and White and Donofrio, JJ.

PER CURIAM

Respondent Kelli Barker appeals as of right from the trial court order terminating her parental rights to the minor child ARN under MCL 712A.19b(3)(c)(i), (c)(ii), (g), (i), and (j). We affirm. We decide this case without oral argument pursuant to MCR 7.214(E)(1)(b).

## I. Basic Facts And Procedural History

Barker was the mother of four children, three of whom had been removed from her custody and to whom her parental rights had been terminated previously, and a fourth, ARN, who is the subject of this proceeding. Barker's parental rights to her older three children had been terminated at three different times, in 1989, 1990 (following voluntary release), and 1999, because of her continued drug use and neglect despite protective services' involvement since 1984.

ARN was born on February 4, 2000, but three months later was removed from Barker's custody and placed in foster care when Barker was arrested and incarcerated in May of 2000. ARN's father, Richard Nalley, had lived with Barker since the time she became pregnant with ARN and had established paternity of ARN. At the time Barker was arrested, Nalley was on probation for domestic violence perpetrated upon Barker.

At the pretrial in May of 2000, Barker admitted to using drugs for thirteen years and to using drugs at the time the petition requesting temporary custody of ARN was filed. Barker also admitted that her parental rights to her other children had been terminated and that at least one of those prior terminations had been due to her substance abuse. Nalley admitted to knowing about

Barker's drug use and to being on probation for domestic violence perpetrated against her. The trial court assumed jurisdiction over ARN based on the admissions of Barker and Nalley and continued her placement in foster care with Spectrum Human Services until the agency had an opportunity to assess Nalley's home.

The parent-agency agreement is not contained in the trial court record, and the transcripts provided on appeal do not contain testimony from any caseworker regarding the elements of the agreement. However, the earliest report in the trial court record, provided by Spectrum Human Services on December 5, 2000, indicates that Barker and Nalley were both required to demonstrate a lifestyle appropriate for the child, including suitable housing, employment, outpatient substance abuse treatment, consistently negative drug screens, attendance at NA meetings, and visits with the child.

Barker entered an inpatient drug treatment center, Self Help Addiction Rehabilitation (SHAR) in May of 2000, immediately upon her release from jail. She completed that program in December of 2000. During this time, she visited ARN weekly at Spectrum Human Services, and the visits were appropriate. She submitted negative random drug screens and completed parenting classes while in the SHAR inpatient program. Nalley also participated in services. At the permanency planning hearing in December of 2000, the FIA did not yet recommend filing a termination petition because of this progress. The trial court referee warned Barker that her drug abuse had been an issue since 1984 and that she would have to prove that she was able to remain drug-free for a long period of time.

Barker then enrolled in the Calvin Wells Treatment Center's outpatient treatment program after graduating from SHAR and submitted seven negative screens, but she failed to drop screens in December of 2000, and January and February of 2001. However, Barker continued to visit ARN weekly at Spectrum and lived in a shelter. At the permanency planning hearing in February of 2001, the FIA still did not indicate a desire to file a termination petition but expressed its intention to give Barker more time to demonstrate sobriety. The trial court referee reiterated the fact that this was a drug case and that, even though there was no doubt Barker knew how to parent, she also had to prove that she could remain drug-free.

At a permanency planning hearing in May of 2001, the FIA asked the trial court to order the filing of a termination petition because of the presence of morphine in Barker's March 21 and 27, 2001, and April 11 and 20, 2001, screens, and cocaine in two of Nalley's screens. Barker provided verification that she had obtained treatment at Detroit Receiving Hospital for varicose deformity on March 22, 2001, and explained that she had borrowed painkillers containing morphine for that infirmity from Nalley's sister. Barker was considered in compliance with other aspects of her treatment plan, such as visitation, individual therapy and housing. Referring to the enormous file dating back to 1984, the trial court referee ordered the agency to file a termination petition.

The FIA filed a supplemental petition requesting termination of the parental rights of Barker and Nalley on August 10, 2001. With regard to Barker, the petition alleged that she submitted screens testing positive for cocaine on June 8, 2001, and June 29, 2001, and had submitted less than one half the number of requested screens.

The pretrial hearing on the supplemental petition was held on September 20, 2001 before the trial court, but the termination hearing was held before a trial court referee on January 7, 2002, and continued on February 11, 2002. On January 7, 2002, the termination petition was dismissed as to Nalley. Barker was the sole witness at the February 11, 2002, termination hearing. She stated that in the summer of 2001 she entered the Quality Behavior Health inpatient drug treatment program but stayed only one week. She did provide documentation of AA/NA attendance since her departure from Quality Behavior Health. She admitted to using crack cocaine and alcohol one time in November of 2001 but stated that she was entering the ninety-day inpatient drug treatment program at Harbor Lights the day following the termination hearing. In response to the referee's question as to why she had not entered another inpatient program sooner, Barker candidly admitted that she knew the program would not be successful unless she really had a desire to participate in it. Barker testified that she was still looking for a home and had resided in a one-bedroom apartment with a friend for the past nine months. She was not employed but derived income from a $950 per month SSI benefits.

The trial court referee recommended termination of Barker's parental rights pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), (i), and (j), and the trial entered an order to that effect on March 5, 2002. It is from this order that Barker appeals.

## II. Standard Of Review

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence.[1] This Court reviews the trial court's findings of fact under the clearly erroneous standard.[2] A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made.[3] We give due regard to the special ability of the trial court to judge the credibility of the witnesses who appeared before it.[4]

## III. The Trial Court's Decision

We conclude that the trial court did not err in finding that the statutory grounds for termination were established by clear and convincing evidence. Barker used drugs for nearly fifteen years, and her parental rights had been terminated to three of ARN's half-siblings in 1989, 1990, and 1999. The conditions leading to the trial court's assumption of jurisdiction over ARN were Barker's continuing drug addiction and the prior terminations. Subsequent additional conditions included lack of suitable housing.

Although Barker successfully completed an inpatient drug treatment program, she relapsed into cocaine use within a year and also failed to establish suitable housing in that year.

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[1] *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993).

[2] MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

[3] *Id.*

[4] *Id.*

While a relapse consisting of one-time cocaine use will not always constitute sufficient evidence to support termination of parental rights, given Barker's long history of drug use, the relapse indicated that her drug dependency had not been successfully and finally resolved for the long term and would not be resolved within a reasonable time.

The trial court admitted Barker's entire court file as evidence, which included child protective proceedings dating back to 1984. Evidence of Barker's neglect of her other children is indicative of her neglect of ARN.[5] The evidence showed that Barker still used cocaine, would be unable to provide ARN with proper care or custody, and that there was a reasonable likelihood that the child would suffer harm if returned to Barker if Barker were not rehabilitated.

Further, the evidence did not show that termination of Barker's parental rights would be contrary to the child's best interests.[6] While Barker loved and desired to parent ARN, the evidence showed that there was no reasonable likelihood that she would be able to do so within a reasonable time. In light of the impermanence continued proceedings would bring, and the lack of evidence of detriment to two-year-old ARN if Barker's parental rights were terminated, the trial court properly determined that termination was not clearly against the child's best interests.

Affirmed.

/s/ William C. Whitbeck
/s/ Helene N. White
/s/ Pat M. Donofrio

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[5] *In re Powers*, 208 Mich App 582, 588-593; 528 NW2d 799 (1995); *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973).

[6] MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).